

Report of the Corporate Landlord

Community Management and Ownership of Council Property Assets

Summary

- 1 This report
 - Summarises the contents of the Quirk Review of community management and ownership of public assets
 - Details the work this council has already done in encouraging community management of assets.
 - Sets out options for future progress.
 - Details the Community Asset Fund with a proposal to make a bid to this fund.
- 2 Members are asked to
 - Note the contents of this report.
 - Approve the recommendation for dealing with the ownership and management arrangements for potentially qualifying properties.
 - Support the proposals to make a bid to the Community Asset Fund to support the St. Clement's Hall development project.

Background

- 3 The Quirk Review was set up in September 2006 by the Department of Communities and Local Government to investigate future options of increased community management and ownership of assets, in particular looking at ways to overcome barriers taking in to account the need to manage risk.
- 4 The Review report (titled 'Making Assets Work') was published in May 2007. The full report can be found at www.communities.gov.uk/index.asp?id=1510615. The three principal conclusions from the report are:-
 - 1 Asset transfer should take place where it can realise social or community benefits, without risking wider public interest concerns.

- 2 The benefits of community ownership of assets can outweigh the risks involved, in appropriate circumstances, and
- 3 Risks can be minimised and managed if business focused approach.
- 5 The report details options for taking this forward and suggests that authorities should have a strategic plan for dealing with this topic. Comments in the report include:-
- Transfer of assets can either be freehold – at a nominal sum – or by long lease rent free.
 - Safeguards need to be built in to any transfer to protect the local authority.
 - On a freehold transfer by arranging for “clawback” of receipts if sold on.
 - On a leasehold transfer by control through the lease covenants.
 - Benefits of this approach include:-
 - Enabling the community group to retain revenue generated and bid for capital funds to maintain and improve the facility.
 - Give hope to disadvantaged areas and promote community cohesion.
 - Provide an accessible base for a range of community services.
 - Enables the local authority and community to work closer together.
 - Risks include:-
 - Lack of capacity/skills/knowledge in the community group to maintain the asset in the future.
 - Asset not fully utilised as delay in obtaining funding.
 - Community group becomes unrepresentative and asset used for non-public interest, non-inclusive purposes.
 - Conflict between community groups to use these assets.
 - Asset is sold on or sub-let to generate money which is not returned to the community or local authority.
- 6 The report details options for minimising these risks which are discussed elsewhere in this paper. It is essential that in taking any potential transfer forward on a property asset the local authority and community group work closely together from the outset to ensure the resultant method, documents, etc maximise the benefits to both sides and ensure the long term future of the asset in public use.
- 7 In connection with this the Government has set up a £30m Community Asset Fund which schemes that meet the criteria can apply for to bring the asset in to a ‘fit for purpose’ state to enable the transfer to take place.

- 8 The closing date for applications to this fund is 15 November 2007 and paragraphs 23 to 28 details the process which has been undertaken to prepare an application to this fund.

Council's response to the Quirk Review

- 9 The Corporate Landlord has already, before the Quirk Review was published, worked with council services and local community groups in seeking to, wherever feasible, transfer the management and responsibility for community type assets to local community groups. This has been done by granting long leases at nil rents rather than transferring the freehold as it is considered that better strategic control can be retained by the council to ensure that the asset is used for the purpose originally envisaged whilst still allowing the occupier to have full flexibility within these parameters to make full use of the land and/or buildings, to retain the income generated from its use and to have sufficient legal interest in the property to apply for external funding.
- 10 An example of where this has happened successfully is the Oaken Grove Community Centre in Haxby where a new community centre was created from part of the former Oaken Grove School which was surplus. The remainder of the site (excluding the playing fields) was sold for a housing development. The Haxby & Wigginton Youth and Community Association were granted a long lease (99 years) at nil rent in 2004 which stated that the Association would be responsible for all future repair and maintenance of the building, payment of any building related costs and ensure the building was open for the public to use for a minimum of 1350 hours per year. The Centre is well used and a focal point for the Community and the management arrangements have worked well.
- 11 There are a number of land and property assets occupied by community groups within the city which are currently let on a variety of terms. Annex A contains a summary of those properties which are occupied by community type groups who could make an application under this initiative. Interest has already been shown by a number of groups on this list and therefore there needs to be a system in place to deal with these applications. The Quirk review highlights the need to adopt a uniform objective approach by the council in dealing with existing and future arrangements.
- 12 It is considered that, in order to qualify as suitable for the transfer of an asset to a community group on this basis then the applicant group should meet certain criteria as follows:-
- It must be the intention to open up the asset for the whole community to have access and for a variety of uses and not just be a specialist or single purpose group. There should also be a minimum time (measured in hours per year) when the land and/or building is open to the public
 - The community group must show that it is properly constituted and is sustainable in economic and social terms. It needs to show it will have the capacity to manage and run the property that meets the terms of any agreement.

- The aims of the group and its proposed use of the asset must support one or more of the Council's priorities and objectives contained in the Corporate Strategy and match the Council's strategic values.

These criteria will be developed into an assessment matrix which will be used to assess all applications made by community groups so that an objective approach can be taken to these requests.

Options

13 Option 1 – Transfer by means of a long lease

Proposal – All qualifying (see paragraph 12 for qualification criteria) community groups, either existing or in the future should be offered a lease, up to 99 years, on a nil rent basis if such a lease doesn't already exist. The length of the lease will be dealt with on a case-by-case basis but will be long enough to ensure the tenant can apply for any funding needed to support the use it will make of the premises and any work it needs to repair/refurbish/improve the property.

The lease is to contain the following conditions:-

- The tenant is to take full responsibility for repairs and decorations, internal and external, day-to-day management of the asset and payment of all outgoings including insurance, business rates and utility costs.
- There should be provision in the lease that the property is open to the public for a minimum period during the year (for example, in the lease at Oaken Grove Community Centre this is 1,350 hours spread throughout the year) and the user clause is tightly written to control the use of the asset for the benefit of the community.
- There should also be safeguards written in to the lease that prevent the tenant from selling on their leasehold interest or operating in a commercial way without the council being able to either take the lease back or charge an appropriate rent to the group. In certain cases to assist the long term sustainability and viability of the community organisation, sub-letting of part on a commercial-type basis may be permitted provided this is a small element of the scheme and is secondary to the community purpose and does not affect public accessibility.

14 Advantages

- The Council retains strategic control of the use and operation of the property by means of lease covenants which are easier to enforce.
- Community group/occupier has full freedom within the parameters set by the lease to operate and manage the property, maximise its income from the property without having to pass any on to the council in rent, and can apply for funding from a range of bodies knowing it will meet their property related criteria for any bid.

- The community has an asset which it can use which is locally managed.
- The council's future potential repair and other liabilities are minimised providing a revenue and capital saving. There is also a reduction for the Council in the repair and maintenance backlog figures.

15 Disadvantages

- The council could lose revenue income from its assets. Some of the community groups which could qualify for such a lease currently pay rent and therefore this income would be lost. In some cases however the Council currently pay a grant to cover some or all of the rent and other outgoings such as business rates and therefore if no rent was being paid the grant would be reduced accordingly. As detailed in paragraph 13 the tenant will be still be responsible for other charges on the property including business rates, insurance premiums etc.
- By granting long leases the council is also foregoing any future income and also, as long as the tenant keeps to the terms of the lease, potential future capital receipts if all or part of these sites could be disposed for other uses. The level of capital receipt, of course, would depend on the use any sites could be put to which would be regulated by planning control and it should be noted that most of the sites are already protected by current planning policies.
- The council could lose some day-to-day control over how the asset is used although retaining the strategic overview. This could be reduced by representation by the relevant council service or local Members on the community groups management board.

16 Option 2 – Transfer by means of a freehold disposal

Proposal – The freehold title of the asset would be transferred to the community group for a nil capital receipt. To protect the future use of this asset restrictive covenants should be put in the sale document concerning the use to which the asset can be put to and also a 'clawback' provision so that if part or all of the asset is sold by the group the council would get an agreed proportion of the sale cost.

17 Advantages

- The community group would have full control over the use and management of the asset which would ensure maximum benefit to the local community.
- The group could retain all income and have the ability to apply for revenue and capital funding knowing it would meet any property related criteria specified by the funders.
- The council's future liability both financially and non financially would be removed. The council may offer funding to support the group but this would be at its discretion.

18 Disadvantages

- The council would lose not only day to day but also any strategic control over the future use of this asset. If the group were not using the property for maximum public use or let the building fall into disrepair then the council would have much more limited powers to rectify the situation than if it still owned the land.
- It would also be much harder to enforce the covenants in the transfer regarding use and subsequent sale as the council may have to go through the courts to achieve success which would be costly and have a risk of not succeeding.
- If the group did fail, although the council would be able to buy back the asset, it would then have to find the funds to rectify the situation and continue with the service offered to the community. It is likely that finding out about any failure would be later than if the group were on a leasehold basis although the risk of this could be reduced if council staff or Members were represented on the community group.
- As with option 1 the council will give up any right to future income or capital receipt if the group operate successfully.

19 Option 3 – Do not follow the recommendations of the Quirk Review

Proposal – to continue as presently dealing with the community groups in a selective way, often responding to the different needs for longer leases to apply for funding or help with maintaining the assets they have.

20 Advantages

- Some flexibility is retained for future use of these assets and the council could generate more revenue and potential capital receipts although there may be a need to meet the community groups need if vacant possession was required to dispose of the asset.

21 Disadvantages

- Community groups would not feel they were being treated with equality.
- The council would be going against the recommendations of a government led review which may have an effect on the CPA rating.
- An opportunity to transfer responsibility and management to local communities would be lost.

22 Taking in to account all the above it is recommended that option 1 is adopted by the council, dealing with each application on its own merits and tailoring the lease terms in each case to maximise the benefits to the council, the community groups and the wider community for the reasons stated in paragraphs 13 and 14.

Community Assets Fund

23 The Government has now produced its timetable and criteria for the applications to this £30m fund. The full document can be found at :www.biglotteryfund.org.uk/prog_community_assets.htm?regioncode=uk&stat us=theprog and can be summarised as follows:-

24 Timescale

Applications to this fund need to be completed and sent by 15 November 2007. The initial assessment of applications will be completed by 31 March 2008 and then there will be a period of 6 months for the applicant to complete a capital delivery plan before final authority is given to proceed with the project.

25 Method of Assessment

The bids will be assessed on a scoring system based on 2 main criteria.

- Need for the project – including how the needs have been identified, the outcomes for the project and how these outcomes will meet the needs.
- Partnership working – identify the partners, what each will bring to the project, the experience, skills and capacity of the partners to deliver the project.

It is clear therefore that to have a chance to be successful any project must be one that is already well formed – shows that partnership working between the authority and community groups is already established and where there is a sustainable plan in place to bring an identified local authority asset in to use by a range of community organisations.

26 Consultation

Working in partnership with York CVS, community groups were asked to express an interest in this initiative and also an assessment was made as to council properties which would be available.

A meeting was held on 14 September with representatives of the council and York CVS to assess the interest shown and it was agreed that the only scheme which could meet the criteria summarised above is a project being developed at St. Clement's Hall, Nunthorpe Road, which is Council owned.

27 This project is to refurbish and convert a redundant church hall and residential accommodation to a community centre and social housing. A Development Group made up of council officers, members and community groups has been in existence for some time and the project is well developed. The main obstacle to making progress is the lack of funding and therefore a successful application to this fund to enable this project to proceed to a conclusion.

28 A project team will take this forward and Member approval to the project will assist in seeking to maximise the chance of success in obtaining funds.

Corporate Objectives

29 This report outlines the council's response to a government priority to enable local communities to have a greater part to play in the management and use

of council's public assets. By adopting the above proposals therefore the council will be meeting a central government objective.

30 It also forms part of the response to the Government White Paper – Strong and Prosperous Communities which is currently been considered by the Director of Neighbourhood Services in the impact it will have on neighbourhood management by the Neighbourhood Pride Unit

31 In addition this proposal will help to meet the following corporate priorities.

3 Improve the actual and perceived condition and appearance of the city's streets, housing estate and public accessible spaces

- Bringing in to public use buildings currently unused.
- Enabling community groups to access funding to improve buildings and increase public access to them.

10 Improve our focus on the needs of customers and residents in designing and providing services

- Transfer of community assets will be on a basis that a range of services and opportunities are provided to the local community and by involving community groups in the process should ensure that local needs are met.

12 Improve the way the council and its partners work together to deliver better services for the people who live in York

- One of the main outcomes of the Quirk review is to achieve just that and by adopting the outcomes as proposed the council will as a consequence work with community groups and other partners to ensure that the buildings deliver better services.

Implications

32 Financial

The financial implications of proceeding with the implementation of the Quirk review are detailed in this report and can be summarised as follows:

- Revenue

By transferring suitable assets to community groups at nil rent there is a potential loss of revenue income which assists services in their budget for service delivery. Annex A shows that, if all the groups on this list met the qualifying criteria set out in paragraph 12 then there could be a loss of revenue of up to £10,000 p.a. If the transfer is by replacing an existing lease with a new long lease then the shortfall in income would have to be met from a supplementary estimate or growth bid as part of the budget process if it were decided to transfer these assets at nil rent. If the group is on an existing lease there needs to be a check to see if grants are made by the Council to pay any rent and any adjustments made

In relation to St Clements Hall, it is currently an empty property which the Council is responsible for securing and maintaining at a cost of approximately

£1.5k per annum. A successful bid to the Community Asset Fund would enable the facility to be brought back in to use and reduce the Council's liability on the asset.

- Capital

By granting long leases the council will defer any future potential for capital receipt from disposal of these assets as long as the community group follows the lease terms. There is always a need for future capital receipts to help fund the council's capital programme.

- Grant Aid

The transfer of the asset, on either a freehold or long term lease, opens up the opportunity for community organisations to make grant applications. These grants could be for revenue but, particularly where the transfer of a capital asset is concerned, for capital funds to refurbish or improve the building. The voluntary and charitable sector generally qualifies for more funding sources due to eligibility requirements and thus this process may mean more investment in the community assets than if the property remains in the authority's control where eligibility for grants for the statutory sector is often more restricted.

All of these mean any application for transfer received from a community group should be looked at closely and all options explored.

33 Legal

As stated in this report the council has already been granting long leases to community groups at nil rent and a standard form of lease has been agreed which will be used in the future. On the basis that the asset is used for community purposes and is open to the public then a nil rent can be charged and the lease will contain provision for a commercial rent to be charged if the tenant stops using the property for this purpose.

It is recommended that the community group should be responsible for a contribution to the legal fees incurred on any lease or other documents as there is no budget for these within the operating services.

34 Property

All property implications are contained and detailed in this report.

35 Human Resources, Equalities, Crime and Disorder, IT

There are no implications for these areas.

36 Risk Management

The risks associated with implementing the Quirk review are detailed in the advantages and disadvantages sections of paragraphs 5 and 13-22 of this report.

It is considered that the best way to minimise these risks is by

- Transferring the council's interest to the community group by granting a long lease containing all the covenants referred to in this report rather than the freehold so that strategic control of the use of these assets is retained.
- Regular inspections of the property is being carried out by the council to ensure that the lease terms are being complied with and to maintain contact with the group/partnership operating and managing the building.
- Possible representation on the community groups management board by council officers and/or elected Members.

Recommendations

- 37 A. Members are asked to consider approval to option 1.

All community groups should be offered a lease, up to 99 years depending on the needs of the community group, on a nil rent basis and with full responsibility for repairs, management and payment of all other outgoings including insurance, business rates and utility costs.

Reason: To show the council is responding to the Quirk review in a positive way which maximises the benefits of transfer of community assets to community groups whilst retaining the strategic control to ensure these benefits are delivered to the local community.

- B. Members are asked to consider supporting the bid to the Community Assets Fund for the development of St Clements church hall

Reason: The St Clements hall proposals have the best potential to meet the criteria for a successful application to the Community Assets Fund and would result in an example of Best Practice in how to deal with transfers to the community.

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Wards Affected:

All *tick*

For further information please contact the author of the report

Background Papers: The Quirk Review of Community Management and Ownership of Public Assets.

Annex A

List of Council assets occupied by community-type groups

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